

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In re Notice of Proposed Rulemaking)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding for Commercial)
Broadcast and Instructional Television Fixed)
Service Licenses)
)
TO: Chief, Audio Services Division)
Mass Media Bureau)

MM Docket No. 97-234

COMMENTS

Edward Czelada, CEO of Superior Communications, hereby files the following comments in response to the Notice of Proposed Rulemaking released November 26, 1997.

"Proposals for Pending Broadcast Initial Licensing Proceeding." (NPRM # 23, #16)

In the case of Comparative Commercial FM applications which were filed after June 30, 1997 and before the NPRM, these applications may be auctioned, but only to the original applicants. These applicants have already committed considerable time and resources to have the long form applications prepared, therefore it would be unfair to allow an additional window openings for the filing of short form applications in these cases.

Any long form application that is dismissed because of a winning bidder in an auction should automatically be refunded any FCC fees relating to that application. Most of these mutually-exclusive applications were never accepted for filing, and the commission has only entered the applicants geographic coordinates and ERP into the FCC database, no further

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processing of the applications was completed. A refund should be automatically given

"General Rules and Procedures for Auctions." (NPRM #47)

Applications for major change of existing stations should not be subject to auctions. Major Change applications should be granted based solely on existing public service issues, such as coverage, first service and population issues and should be determined by the allocations department. Any other method would be detrimental to small businesses that provide important radio and television services to rural areas. Section 309 of the Communications Act requires a fair and equitable distribution of broadcast stations. Small businesses often have limited resources and could not compete in a bidding round against large corporations.

"Procedures for Pending Applications Not Subject to Section 309." (NPRM # 80)

Secondary service stations should not be auctioned. Secondary services such as translators and boosters may be revoked at any time to make way for new stations or upgrades to full service stations. We feel that there is no need to change the current processing procedures of FM translators and they should be processed according to 74 1233.

If secondary stations are auctioned and then the license is later revoked due to the addition of full service station, the original auction fee should be refunded. Secondary services are not full stations but actually extensions the main primary facility. Because the a primary station may put a translator within the protected contour of its facility on an adjacent channel, no auction could be conducted on these applications.

In the event that 74 1233 is revoked, Non-Commercial applicants should be exempted from auctions, provided the reason they are applying on a commercial channel is due to the

Commission's Channel 6 restrictions. Non-Commercial stations are often limited in ERP and coverage on their primary facility due to the 3000 person limitation in interference to TV 6¹. Non-Commercial stations often rely on translators operating within the commercial band to supplement mediocre coverage. Another acceptable option is to once again allow reserved band translators to operate in the within the grade "B" of TV-6 with limited interference².

IFTS stations should be exempted from auctions because they are licensed to educational organizations and are often used by schools. The Commission should not attempt to make a profit on services used for educational purposes.

"General Rules and Procedures for Auctions." (NPRM # 50)

Non-Commercial entities should be exempted from auctions if they are applying on a Commercial Channel because Channel 6 regulations restrict the further development of any other reserve band facilities. They can request a Channel to be allocated and reserved for Non-Commercial use. Whenever any Commercial Channel is allocated, an additional time period should be allowed during which any non-profit entity could request the channel to be re-allocated for Non-Commercial use. This showing shall include a coverage map that demonstrates the facility provides a "white" or "gray" area that does not have a Non-Commercial service. This showing must also prove that there is no other reserved -band frequency that would substantially serve the same area. Non-Commercial applicants should be given a priority over Commercial applications to best serve the public interest.

¹ 47 CFR 73.525

² Docket 88-140 removed reserved band translators from grade "B" of TV-6.

"Designated Entities" (NPRM # 92)

A bidding credit or multiplier should be applied for small business that have a limited ownership in broadcast facilities. This bidding credit is necessary because of the decreasing diversity in broadcast ownership. There is a dangerous trend toward broadcast stations being owned by a small number of large corporations. This has already taken place in wireless services. However, having only few different choices in paging or other wireless services is less critical than in the broadcast services realm. A diversity of ownership will promote a healthy diversity in programming. In conclusion, long standing Commission policy has made Non-Profit entities exempt from FCC filing fees³. An auction would be nothing more than a variable - filing fee. Non-Profit entities should not be subject to the auctioning proceedings. The Commission must either lessen the excessive restrictions of the TV-6 rules to allow for additional Reserve Band frequencies to be allocated or give priority to Non-Commercial applicants when there is little or no Non-Commercial service in an area due to Channel 6 restrictions.

Respectfully Submitted,

By: Ed Czelada
Edward Czelada
CEO, Superior Communications

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Edward Czelada
3302 N. Van Dyke
Inlay City, MI 48444
(810) 724-5093

³ Section 397(6)